

1 Q Do you have my question, Mr.

2 Shell?

3 A No. Can you reread it or reask it

4 or --

5 Q Yes. What is the number that

6 Comcast -- what the prediction for Comcast?

7 A What is what prediction? I'm

8 sorry, I am not -- I am not following your

9 question.

10 Q I am back on 159.

11 A I have got it, yes.

12 Q And I am on number 1, forecasts.

13 And you have the different carriers, and you

14 have different numbers next to the carriers.

15 JUDGE SIPPEL: Why don't you ask

16 him, "What is the given for Comcast," I mean,

17 right?

18 BY MR. SCHMIDT:

19 Q What is the rating for Comcast?

20 JUDGE SIPPEL: What is the given?

21 THE WITNESS: My understanding was

22 as part of our bid for these rights we

1 guaranteed that Comcast would carry the  
2 network.

3 JUDGE SIPPEL: So what is the  
4 number ascribed to it? Ten, right?

5 THE WITNESS: It is a 10.

6 JUDGE SIPPEL: Okay.

7 BY MR. SCHMIDT:

8 Q Which means definitely, right?

9 A That means definitely, yes.

10 Q There was never any question in  
11 your mind that Comcast would pay the --

12 JUDGE SIPPEL: "Definitely" means  
13 what it means. Come on. Come on, please.

14 BY MR. SCHMIDT:

15 Q You were willing to reconfigure --  
16 one of the bids that you put in involved  
17 reconfiguring Versus to be a tiered football  
18 network, correct?

19 A I believe at one point the NFL  
20 communicated to us, or we learned that they  
21 were considering a football-only network, and  
22 I believe we said that that was their

1 requirement to be eight games, we would be  
2 willing to consider it, but we were not in  
3 favor of it, no.

4 Q You, in fact, put in a proposal,  
5 on it, didn't you?

6 A We did, yes.

7 Q And the proposal involved the same  
8 amount of money, didn't it?

9 A I believe the proposal involved  
10 the same amount of cash rights fees. But  
11 because equity was a big component of it,  
12 obviously, I don't -- I don't think it was the  
13 same value, but, yes, it was the same amount  
14 of cash rights fees.

15 Q And to make that proposal happen,  
16 you were willing to let you other non-football  
17 sports programming lapse.

18 A Once again, we preferred not that  
19 outcome, but yes, that is correct.

20 Q You were ready to do that.

21 A If that was a requirement for the  
22 eight-game package, yes, we were willing to do

1 that.

2           Q       Do you recall telling the NFL at  
3 one point, "If the eight games go to Comcast,  
4 to Versus, the NFL Network, without the eight  
5 games, would still have significant value"?

6           A       Yes. I remember that being  
7 communicated, yes.

8           Q       Do you recall during the course of  
9 -- and I am trying to be very fast, so I don't  
10 want to have to show you a lot of documents if  
11 I don't have to, so let me see if you recall  
12 this. Do you recall during the course of  
13 discussions with the eight-game package  
14 sending an internal document where you asked  
15 the question, "How should we leverage Matt and  
16 his team?" Do you recall me showing you that  
17 in your deposition?

18          A       I do, yes.

19          Q       Who is Matt?

20          A       Matt Bond is the head of  
21 distribution for Comcast.

22          Q       And he is not on the programming

1 side. He is on the cable side, right?

2 MR. PEREZ-MARQUES: Objection,  
3 Your Honor. I realize we are doing this for  
4 expediency, but I do object to this question  
5 without the context of the document, because  
6 it is a very specific context.

7 MR. SCHMIDT: I think the witness  
8 has already said he understands what I am  
9 asking about, Your Honor. I am really trying  
10 to be mindful of Your Honor's concerns about  
11 --

12 JUDGE SIPPEL: Well, I hear you  
13 both. Yes, I am not -- well, what is the  
14 nature of the objection?

15 MR. PEREZ-MARQUES: He is asking a  
16 question of one line out of a long document  
17 and trying to draw an inference from that  
18 line, without giving Your Honor or the  
19 Enforcement Bureau the benefit of the context.  
20 Even referring the Court to the exhibit number  
21 I think would be helpful, since the Court has  
22 the exhibit available.

1 JUDGE SIPPEL: Well, we have -- we  
2 are talking about Matt Bond right now.

3 MR. PEREZ-MARQUES: Yes, Your  
4 Honor.

5 JUDGE SIPPEL: That is all. He is  
6 identifying Matt Bond. And you identified Mr.  
7 Matt Bond as what? He is the head of what  
8 department, what is --

9 THE WITNESS: He is on the cable  
10 side of the company, and he is the one that  
11 kind of negotiates with other networks to see  
12 who gets carried and at what price.

13 JUDGE SIPPEL: So he negotiates  
14 price.

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: A very important  
17 person. Okay. Now, what is the question?

18 BY MR. SCHMIDT:

19 Q Matt Bond is on the cable side as  
20 opposed to the network side?

21 JUDGE SIPPEL: We know that. What  
22 is the next question?

1 BY MR. SCHMIDT:

2 Q The next question is: do you  
3 remember telling me in your deposition that  
4 you felt like it was an advantage to have Mr.  
5 Bond, figuratively speaking, down the hall  
6 from you, so you could talk with him?

7 A Yes, I remember that.

8 Q And that was true, right?

9 A Absolutely, yes.

10 Q Do you remember that in that same  
11 -- I believe it is that same document --  
12 actually, it is in a separate document,  
13 something we have marked as Exhibit 83. Do  
14 you recall me showing you a document during  
15 your deposition where you wrote that, given  
16 the impact to Versus, as opposed to putting it  
17 on the NFL Network, would give the NFL a less  
18 painful path to distribution?

19 MR. PEREZ-MARQUES: Your Honor, I  
20 would appreciate a copy of the exhibit if he  
21 is going to be asking questions about it  
22 without showing it to the witness.

1 JUDGE SIPPEL: That is fair.

2 MR. SCHMIDT: Your Honor, may I  
3 approach?

4 JUDGE SIPPEL: You certainly may.  
5 Do you have copies?

6 MR. SCHMIDT: Yes, I do, Your  
7 Honor.

8 JUDGE SIPPEL: All right. This  
9 says Chandler Russett Pattah at the top. This  
10 is already received into evidence.

11 MR. SCHMIDT: Yes, it is, Your  
12 Honor.

13 JUDGE SIPPEL: And this is from  
14 yourself? Go ahead. You do it, Mr. Schmidt.

15 BY MR. SCHMIDT:

16 Q This is an e-mail you wrote on  
17 September 22, 2005, correct?

18 A Let me take a quick second to look  
19 at it.

20 (Pause.)

21 Yes, I have seen this.

22 Q And you are talking about the



1 negotiations over the eight-game package in  
2 this document, correct?

3       A       I believe the document is laying  
4 out our first proposal to bid for the eight-  
5 game package, yes.

6               JUDGE SIPPEL: And that is in  
7 September of 2005.

8               THE WITNESS: Correct.

9               BY MR. SCHMIDT:

10       Q       And in that proposal, under item  
11 3, under the fourth large bold point, you  
12 write, "Why is OLN the preferred alternative,"  
13 correct?

14       A       I do, yes.

15       Q       Preferred alternative to the NFL  
16 Network?

17       A       Presumably to the NFL Network, but  
18 also to any other new network that might be  
19 bidding for the games.

20       Q       One of the things you write is  
21 that it would be a less painful path to  
22 distribution, correct?

1           A       That is correct.

2           Q       And when I asked you in your  
3 deposition, you said that one of the things  
4 you were talking about in saying to the NFL  
5 that it was a less painful path to  
6 distribution if the games went on Versus as  
7 opposed to the NFL Network was the possibility  
8 of tiering the NFL Network, is that correct?

9                   MR. PEREZ-MARQUES: I'm sorry.  
10 Can I get a line and page reference for the  
11 testimony you are saying?

12                   BY MR. SCHMIDT:

13          Q       Do you remember that, Mr. Shell?

14          A       I think you would have to read  
15 back my deposition, because, as I look at that  
16 today, I don't think that is -- I don't think  
17 that -- that may be a small piece of what I  
18 meant, but that is not exactly what I meant.

19          Q       That is all I am asking. One of  
20 the things you were referring to was the  
21 tiering right, correct?

22          A       Yes.

1 MR. PEREZ-MARQUES: In what  
2 answer, Mr. Schmidt?

3 JUDGE SIPPEL: Let's get a page  
4 and a line reference here.

5 MR. SCHMIDT: Your Honor, I am  
6 looking at page 126, line 15, to 127, line 16.

7 BY MR. SCHMIDT:

8 Q And I asked the witness, "What  
9 does that refer to?" And the witness says,  
10 "That refers to a wide variety of things. I  
11 think we felt that there were a number of ways  
12 that the NFL would lessen the risk to them if  
13 we put the eight games on OLN versus some of  
14 the other alternatives.

15 "Those ranged from -- we had a  
16 network -- we had a number of different pro  
17 and college sports that would make it easier  
18 to achieve the economics and the distribution  
19 that we, you know, wanted to get. Number two,  
20 a lot of our affiliate agreements were up,  
21 meaning that instead of going for a surcharge  
22 strategy, we went with a strategy of just

1 resetting the rate, which is a lot easier,  
2 based on already having distribution.

3           " And then, we thought that the  
4 risks to the NFL itself were lessened a bit by  
5 going on, by putting the games on OLN, because  
6 I knew we had this tiering right. And,  
7 therefore, I would assume that carriage of the  
8 NFL Network would be part of this overall  
9 package of value, and that would lessen their  
10 risk to their own network."

11           Did I read -- was that your  
12 testimony?

13       A       Yes.

14       Q       Do you have any changes to that?

15       A       No. I think it was well said.

16       Q       Do you recall us talking at your  
17 deposition about ad-supported networks?

18       A       Not specifically. I am sure we  
19 did, but be more specific about it.

20       Q       What is an ad-supported network?

21       A       An ad-supported network is a  
22 network that has commercials on it and tries

1 to derive some of its value, or a significant  
2 amount of its value, from advertising.

3       Q       So ad-supported networks need  
4 broad carriage to get sufficient licensing and  
5 advertising revenues?

6       A       It depends on what their plan is  
7 for the amount of advertising they need to  
8 achieve their business model.

9       Q       Versus has a plan that depends on  
10 broad carriage, right?

11      A       Oh, definitely, yes.

12      Q       As far as you know, the NFL  
13 Network is an ad-supported network, right?

14      A       I believe the NFL is an ad-  
15 supported network, yes, but I don't know their  
16 clients.

17      Q       Do you agree with me that there  
18 were some advertisers who require a certain  
19 amount of penetration before they will buy  
20 advertising from a network?

21      A       That is correct, yes.

22      Q       And you agree with me that the

1 amount of distribution that a network gets  
2 affects its ability to get programming, right?

3       A       I think what I testified in my  
4 deposition to is that some programming it does  
5 and some programming it doesn't.

6       Q       There is programming where it  
7 makes a difference how broad your distribution  
8 is, right?

9       A       Yes. And there is programming  
10 that it doesn't matter as well.

11       Q       Do you remember predicting that if  
12 Comcast tiered the NFL Network it would cause  
13 a chain reaction in the industry?

14       A       Yes.

15       Q       And you told the media that the  
16 best way for the NFL Network to ensure the --  
17 for the NFL to ensure the NFL -- the success  
18 of the Network is to go with us, didn't you?

19       A       I don't believe I ever told the  
20 media anything, so no, I don't agree with  
21 that?

22       Q       Do you know who Richard Sandomir

1 is?

2           A        I do, yes.

3           Q        Who is Richard Sandomir?

4           A        He is a reporter for The New York  
5 Times.

6           Q        Part of the media?

7           A        Part of the media.

8                   MR. SCHMIDT: May I approach, Your  
9 Honor?

10                   JUDGE SIPPEL: You may.

11                   BY MR. SCHMIDT:

12          Q        Here is Exhibit 108.

13                   JUDGE SIPPEL: It is in?

14                   MR. SCHMIDT: Yes, it is, Your  
15 Honor.

16                   BY MR. SCHMIDT:

17          Q        A January 26, 2006, e-mail from  
18 you to Mr. Sandomir?

19          A        I stand corrected. Yes, this is  
20 my e-mail.

21          Q        And this is you telling Mr.  
22 Sandomir that the best way for the NFL to

1 ensure the success of the NFL Network is to go  
2 with us, right?

3           A       That is correct.

4           Q       And by "going with us," you mean  
5 giving the eight-game package to Versus,  
6 correct?

7           A       That is correct, yes.

8           Q       Do you recall saying in your  
9 deposition that ad-supported networks are --  
10 don't work on the contract -- I'm sorry.

11                   JUDGE SIPPEL: Is this now -- as I  
12 understand how this works, this -- the flow of  
13 the conversation, if you will, the e-mail  
14 flow, it started with Mr. Sandomir? Did he  
15 send it to you on January 25 at 11:49 in the  
16 evening?

17                   THE WITNESS: Well, it is cut off,  
18 so I don't know actually how the whole chain  
19 started.

20                   MR. PEREZ-MARQUES: It continues  
21 on the second page.

22                   JUDGE SIPPEL: It is double-sided.



1 THE WITNESS: That appears to be  
2 right, Your Honor. That is correct.

3 JUDGE SIPPEL: So, in other words,  
4 you were responding to him when you sent him  
5 your message?

6 THE WITNESS: Yes.

7 JUDGE SIPPEL: And your message  
8 was, "The best way for them to ensure the  
9 success of NFL Network is to go with us." Am  
10 I reading it right?

11 THE WITNESS: You are reading it  
12 right, yes.

13 JUDGE SIPPEL: Okay. Go ahead,  
14 I'm sorry, Mr. Schmidt. You go ahead, sir.

15 BY MR. SCHMIDT:

16 Q Do you recall telling me in your  
17 deposition that if you're an ad-supported  
18 network the sports tier that Comcast has, as  
19 currently configured, doesn't work for you?

20 A Yes.

21 Q It is not viable for an ad-  
22 supported network.

1           A        I think if you are -- want to be  
2 an ad-supported network the way I define it,  
3 which is a broad amount of advertising  
4 revenue, then you have to price yourself such  
5 that the -- not to be on a sports tier,  
6 because my view was that it didn't work.

7                   MR. SCHMIDT: Okay. Nothing  
8 further.

9                   JUDGE SIPPEL: I am just curious  
10 about this 108 Exhibit. This is all happening  
11 on the 25th of January, which is the day  
12 before the -- that significant telephone -- am  
13 I right? The day of the conversation was the  
14 26th, or was it the 27th?

15                  MR. SCHMIDT: 27th, Your Honor.

16                  JUDGE SIPPEL: 27th, all right.  
17 It was two days before. But look at the time,  
18 11:45 at night. 11:39 at night. All right.  
19 What was happening here? I mean, this is  
20 obviously not -- this is not run-of-the-mill  
21 business, is it?

22                  THE WITNESS: Well, it is possible

1 I could have been on the west coast. So I  
2 don't -- I normally would not be sending e-  
3 mails at 11:30 at night, so --

4 JUDGE SIPPEL: But do you  
5 understand why I am asking -- I mean, isn't  
6 there some significance to this time period?  
7 The 25th is close to the 27th, which is the  
8 phone call, or, you know, the ultimate  
9 decision by NFL.

10 THE WITNESS: Well, yes, Your  
11 Honor. I think -- and halfway down I say --  
12 I reference an owners meeting that was the  
13 next day. So, obviously, we didn't know it,  
14 but that owners meeting appeared to be where  
15 they made the decision, and, therefore, then  
16 the decision was communicated.

17 So this was the day before the  
18 owners meeting, and then the call I guess  
19 would have been after the owners meeting.

20 JUDGE SIPPEL: You are not -- I  
21 don't see where you are cc'ing anybody, like  
22 you must have some kind of a public relations

1 person someplace. Everybody has those.

2               THE WITNESS: I guess I would  
3 describe, Your Honor, Richard Sandomir is  
4 somebody I have known for 15 years. So I  
5 didn't view this as an interview. I didn't --  
6 you know, obviously, when you talk to the  
7 press, anything can get into the papers, but  
8 I viewed this as two interested parties  
9 talking. So, you know, perhaps that was naive  
10 and it didn't -- as far as I know, this didn't  
11 get into the press. But I know this was two  
12 friends talking by e-mail.

13              JUDGE SIPPEL: But he is naming  
14 some of the names of the owners and who is for  
15 it, who is against it, and it -- I mean, it  
16 sounds like you are getting --

17              THE WITNESS: I don't --

18              JUDGE SIPPEL: It sounds like you  
19 are getting a lot of -- I would call it  
20 intelligence ahead of the game day, so to  
21 speak, that being the 27th.

22              THE WITNESS: Yes. I think it was

1 just gossip. I mean, I think, clearly, I was  
2 saying who I thought it was for, and he was  
3 saying who he thought it was for, and it was  
4 just gossip. I think the way it ended up  
5 turning out I was wrong on most of my gossip  
6 in predictions anyway.

7 JUDGE SIPPEL: Okay. Anybody else  
8 have anything they want to ask on that?

9 MR. SCHONMAN: Well, I --

10 JUDGE SIPPEL: We are not  
11 finished. You will.

12 MR. SCHONMAN: Thank you.

13 JUDGE SIPPEL: You will? Okay.  
14 We will get to that.

15 How much more?

16 MR. SCHMIDT: Your Honor, can I  
17 just ask a few more questions?

18 JUDGE SIPPEL: Yes, certainly.  
19 Yes, yes, yes. How much more?

20 MR. SCHMIDT: Probably four more  
21 minutes.

22 JUDGE SIPPEL: Thank you.

1 BY MR. SCHMIDT:

2 Q Do you recall me asking you if you  
3 agreed with the statement one of your  
4 colleagues said in the media that because of  
5 its male demographic that Versus appeals to  
6 that about the only channels you don't  
7 consider competition are women-oriented  
8 Oxygen, Lifetime, and Hallmark? Do you recall  
9 agreeing with that?

10 A I don't specifically remember  
11 agreeing with that. But that doesn't mean I  
12 don't agree with it, but I don't recall  
13 specifically, no.

14 Q Do you agree with it?

15 A Can you read it back again?

16 Q About the only channels that are  
17 not competition to Versus are women-oriented  
18 Oxygen, Lifetime, and Hallmark?

19 A In a broad sense, because we sell  
20 advertising to men 25 to 54, yes, and in a  
21 broad sense I agree with that, yes.

22 Q Do you know who Allan Gold is?

1           A       I do.

2           Q       Who is Allan Gold?

3           A       Allan Gold is a -- was a gentleman  
4 who was a consultant to Comcast when I joined  
5 the company, and was helping us with some of  
6 our sports-related strategies.

7           Q       Specifically, trying to get the  
8 eight-game package, right?

9           A       Plus a number of other things as  
10 well, but that was one of his tasks, yes.

11          Q       Okay. And he used to be employed  
12 at the NFL, didn't he?

13          A       He may have been. I don't know  
14 his past history.

15          Q       In fact, he was a lawyer at the  
16 NFL, wasn't he?

17          A       Once again, I don't know his -- I  
18 really have no idea where he worked before he  
19 was our consultant.

20          Q       You didn't know he worked at the  
21 NFL?

22          A       I didn't know. Actually, I didn't

1 know until this moment.

2           Q       Did he give you information based  
3 on talks he would have while he was working  
4 for you with people at the NFL about the NFL's  
5 business deals?

6           JUDGE SIPPEL: I'm sorry. Who are  
7 we talking about? I missed it.

8           MR. SCHMIDT: There is a gentleman  
9 named Allan Gold who used to be a lawyer for  
10 NFL.

11           JUDGE SIPPEL: Allan Gold?

12           MR. SCHMIDT: Yes.

13           JUDGE SIPPEL: Thank you.

14           MR. SCHMIDT: Who Mr. Shell worked  
15 with as a consultant.

16           BY MR. SCHMIDT:

17           Q       And isn't it correct that he used  
18 to give you information that he would gather  
19 by talking to his former colleagues while you  
20 were bidding on the eight-game package?

21           A       His job for us was to help us put  
22 together our bid, and he, you know, helped us